Abdul Jalil bin Abdul Hamid & Ors v Ketua Pengarah Kesatuan Sekerja, Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–69 OF 2002

RAUS J

29 DECEMBER 2003

Labour Law — Trade union — Dispute — Director General of Trade Union aware of disputes between two factions of National Union of Bank Employees — Director General accepted Forms L submitted by one faction and rejected Forms L submitted by another — Whether Director General should have accepted Forms L of one faction — Whether Director General's action had effect determining office bearers of union — Whether Director General acted in excess of jurisdiction — Trade Unions Act 1959 ss 7 & 41

Labour Law — Trade union — Rules and regulations — National Union of Bank Employees — Meeting held with insufficient quorum — Whether meeting lawful — Whether decisions taken thereat null and void — Whether submission of Form L pursuant to s 41(2) of Trade Unions 1959 null and void — Whether Director General of Trade Union right in law to reject Form L

On 30 October 2001, the national executive committee ('Exco') of the National Union of Bank Employees ('NUBE') removed the fifth applicant ('Solomon') as the General Secretary of NUBE. Consequently, the respondents submitted two Forms L dated 2 November 2001 pursuant to s 41(2) of the Trade Unions Act 1959 ('the Act') to the Director General of Trade Unions ('DGTU') to reflect, inter alia, the appointment of the fifth respondent as the new General Secretary of NUBE to replace Solomon ('the respondents' Forms L'). The DGTU accepted the respondents' Forms L. On 16 November 2001, Solomon filed a suit in the High Court to challenge the decision of the Exco of NUBE ('the Solomon suit'). On the application of the defendants in the Solomon suit, the High Court struck out and dismissed the Solomon's suit. On 3 May 2002, Solomon filed an appeal to the Court of Appeal against the High Court decision and for a stay of the striking out order made by the High Court pending the final disposal of his appeal to the Court of Appeal. The Court of Appeal granted an interim order to stay the striking out order of the High Court. The appeal proper has not yet been heard.

Meanwhile, the applicants and Solomon ('Jalil's group') held a meeting ('the first meeting') and pursuant thereto submitted a Form L dated 26 April 2002 to the DGTU, naming the office bearers of NUBE ('the applicants' first Form L'). Jalil's group held another meeting ('the second meeting') and appointed other officers to fill the vacant positions of the Exco members. A Form L dated 30 April 2002 was submitted to the DGTU, naming the additional office bearers of NUBE ('the applicants' second Form L'). A further meeting ('the third meeting') was held by Jalil's group reinstating Solomon as the General Secretary and a Form L dated 3 May 2002 was submitted to the DGTU ('the applicants' third Form L'). The three Forms L submitted by Jalil's group were rejected by the DGTU.

A This was an application by the applicants for an order of certiorari to quash the decision DGTU in rejecting the applicants' first, second and third Forms L and in accepting the respondents' Forms L

Held:

B (1) The first meeting by Jalil's group was illegal and contrary to the constitution of NUBE because under r 10.5 of NUBE's constitution, the quorum for its Exco meeting was two-third of the Exco members. At the time of the first meeting, there were 24 Exco members. Therefore, the necessary quorum for the Exco meeting at the material C time was 16. However, the first meeting held by the Jalil's group was attended by ten Exco members only. Clearly the first meeting was in breach of the quorum requirement and hence, unlawful. As the first meeting was unlawful, all decisions taken thereat, including the submission of the names of the office-bearers in the applicants' first Form L was null and void. Thus, the DGTU was right in law to reject the said Form L D (see para 14).

(2) The second meeting was also an unlawful meeting for having breached r 10.5 of NUBE's constitution. Although the attendance list showed 17 members present, seven of them were new members. There was no explanation as to how the seven became members of the Exco. As such, E all decisions made at this meeting, including the submission of the applicants' second Form L was also null and void. Again, the DGTU was right in law to reject the applicants' second Form L (see para 15).

(3) Since the first and second meetings were null and void, there was no possibility that the third meeting could be valid. As such, the DGTU was F right in law to reject the applicants' third Form L (see para 16).

(4) Accordingly, the DGTU was correct in law to have rejected the applicants' first, second and third Forms L. The DGTU did not commit any error and there was no reason to interfere with his decision (see para 17).

(5) On the other hand, the DGTU was wrong in accepting the respondents' G Forms L. Although the DGTU had averred in his affidavit that he was merely performing his statutory duties under s 41(2) of the Act, the DGTU's action had the effect determining the office bearers of NUBE and this was in excess of his jurisdiction. Section 41 of the Act did not empower or authorize the DGTU to determine or declare the office H bearers of a union. The true purport of s 41 of the Act was merely to impose on the trade union an obligation to notify the DGTU of any change for the purpose of maintenance of the requirements under s 7 thereof. Section 41(2) was to impose the corresponding duty on the DGTU to make the necessary changes after satisfying himself that they were in accordance with the rules of the union. However, when the I constitution of the office bearers of a union, as in the present case, was hotly contested, the DGTU cannot resort to s 41 of the Act to settle the dispute between the competing groups (see paras 20, 22–23).

(6) In the instant case, the DGTU was not only aware of the disputes between the two groups, but was also aware that the disputes had been brought to the court by virtue of letters written by Solomon's solicitors. The DGTU must be aware that each group did not have the necessary quorum to make the decision for NUBE. The DGTU, being fully aware and conscious of these facts, cannot use s 41(2) of the Act to indirectly solve the disputes between the two groups. By doing so, the DGTU had acted in excess of his jurisdiction and thus, his decision was open to judicial review (see paras 24, 27).

(7) Accordingly, the application to quash the decision of the DGTU in rejecting the applicants' first, second and third Forms L was dismissed as the DGTU was right in rejecting these Forms L. The application to quash the decision of the DGTU in accepting the respondents' Forms L, which had the effect of declaring the lawful office bearers of the Exco, was allowed (see paras 28).

[Bahasa Malaysia summary

Pada 30 Oktober 2001, jawatankuasa eksekutif tempatan ('Exco') kepada Kesatuan Sekerja Nasional Pekerja-Pekerja Bank ('NUBE') telah menggugurkan pemohon kelima ('Solomon') sebagai Setiausaha Am NUBE. Berikutan itu, responden-responden telah mengemukakan dua Borang L bertarikh 2 November 2001 menurut s 41(2) Akta Kesatuan Sekerja 1959 ('Akta tersebut') kepada Ketua Pengarah Kesatuan Sekerja ('KPKS') untuk membayangkan, antara lain, pelantikan responden kelima sebagai Setiausaha Am NUBE yang baru bagi menggantikan Solomon ('Borang-Borang L responden-responden'). KPKS telah menerima Borang-Borang L responden-responden. Pada 16 November 2001, Solomon telah memfailkan satu guaman di Mahkamah Tinggi untuk mencabar keputusan Exco NUBE ('guaman Solomon'). Berdasarkan permohonan defendan-defendan dalam guaman Solomon, Mahkamah Tinggi telah membatalkan dan menolak guaman Solomon tersebut. Pada 3 Mei 2002, Solomon telah memfailkan satu rayuan ke Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi dan untuk satu penggantungan terhadap perintah pembatalan yang dibuat oleh Mahkamah Tinggi sementara menunggu selesainya rayuan beliau ke Mahkamah Rayuan. Mahkamah Rayuan telah membenarkan satu perintah sementara untuk menggantung perintah pembatalan Mahkamah Tinggi tersebut. Rayuan sebenar masih belum didengar.

Sementara itu, pemohon-pemohon dan Solomon ('kumpulan Jalil') telah mengadakan satu mesyuarat ('mesyuarat pertama') dan berikutan itu mengemukakan satu Borang L bertarikh 26 April 2002 kepada KPKS, menamakan pemegang-pemegang jawatan NUBE ('Borang L pertama pemohon-pemohon'). Kumpulan Jalil telah mengadakan satu lagi mesyuarat (mesyuarat kedua') dan melantik pegawai-pegawai lain untuk mengisi kekosongan jawatan ahli Exco. Satu Borang L bertarikh 30 April 2002 telah dikemukakan kepada KPKS, menamakan pemegang-pemegang jawatan tambahan NUBE ('Borang L kedua pemohon-pemohon'). Satu mesyuarat lagi ('mesyuarat ketiga') telah diadakan oleh kumpulan Jalil mengambil semula

Solomon bekerja sebagai Setiausaha Am dan satu Borang L bertarikh 3 Mei 2002 telah dikemukakan kepada KPKS (Borang L ketiga pemohon-pemohon'). Ketiga-tiga Borang L yang dikemukakan oleh kumpulan Jalil telah ditolak oleh KPKS.

Ini adalah permohonan oleh pemohon-pemohon untuk satu perintah certiorari untuk membatalkan keputusan KPKS keran menolak Borang-Borang L pertama, kedua dan ketiga pemohon-pemohon dan menerima Borang L responden-responden.

Diputuskan:

(1) Mesyuarat pertama oleh kumpulan Jalil adalah tidak sah dan bercanggah dengan perlembagaan NUBE kerana di bawah k 10.5 perlembagaan NUBE, korum untuk mesyuarat Exconya hendaklah terdiri dua pertiga daripada ahli-ahli Exco. Pada masa mesyuarat pertama. Terdapat 24 ahli Exco. Oleh itu, korum yang diperlukan untuk mesyuarat Exco pada masa material adalah 16 orang. Namun begitu, mesyuarat pertama yang diadakan oleh kumpulan Jalil dihadiri oleh sepuluh ahli Exco sahaja. Adalah jelas mesyuarat pertama telah melanggar keperluan korum dan justeru itu, adalah menyalahi undang-undang. Memandangkan mesyuarat pertama adalah menyalahi undang-undang, semua keputusan yang dibuat di sana, termasuklah nama-nama pemegang-pemegang jawatan yang dikemukakan dalam Borang L pertama pemohon-pemohon adalah terbatal dan tidak sah. Oleh itu, KPKS adalah betul dari segi undang-undang untuk menolak Borang L tersebut (lihat perenggan 14).

(2) Mesyuarat kedua juga satu mesyuarat yang menyalahi undang-undang kerana telah melanggar k 10.5 perlembagaan NUBE. Walaupun senarai kehadiran menunjukkan 17 ahli yang hadir, tujuh daripada mereka merupakan ahli baru. Tiada penjelasan bagaimana tujuh orang tersebut menjadi ahli Exco. Oleh itu, semua keputusan yang dibuat dalam mesyuarat ini, termasuk pengemukaan Borang L kedua pemohon-pemohon yang juga terbatal dan tidak sah. Sekali lagi, KPKS adalah betul di sisi undang-undang untuk menolak Borang L kedua pemohon-pemohon (lihat perenggan 15).

(3) Memandangkan mesyuarat pertama dan kedua adalah terbatal dan tidak sah, tidak mungkin mesyuarat ketiga itu sah. Oleh itu, KPKS adalah betul di sisi undang-undang untuk menolak Borang L ketiga pemohon-pemohon (lihat perenggan 16).

(4) Sewajarnya, KPKS adalah betul di sisi undang-undang untuk menolak Borang L pertama, kedua dan ketiga pemohon-pemohon. KPKS tidak melakukan apa-apa kesilapan dan tiada sebab untuk campur tangan dengan keputusan beliau (lihat perenggan 17).

(5) Sebaliknya, KPKS adalah salah kerana menerima Borang L responden-responden. Walaupun KPKS telah menegaskan dalam afidavit beliau bahawa beliau hanya menjalankan tugas statutori beliau di bawah s 41(2) Akta tersebut, tindakan KPKS mempunyai kesan menentukan pemegang-pemegang jawatan NUBE dan ini telah melampaui bidang

kuasa beliau. Seksyen 41 Akta tersebut tidak memberikan kuasa kepada KPKS untuk menentu atau mengisytiharkan pemegang-pemegang jawatan suatu kesatuan. Maksud sebenar s 41 Akta tersebut hanya untuk mengenakan ke atas kesatuan sekerja satu kewajipan untuk memaklumkan KPKS tentang apa-apa perubahan bagi tujuan penyelenggaraan keperluan-keperluan di bawah s 7. Seksyen 41(2) adalah untuk mengenakan tugas yang sepadan ke atas KPKS untuk membuat perubahan yang perlu selepas berpuas hati bahawa mereka adalah menurut kaedah-kaedah kesatuan tersebut. Namun begitu, apabila perlembagaan pemegang-pemegang jawatan kesatuan tersebut, seperti dalam kes semasa, telah dicabar dengan hebatnya, KPKS tidak boleh menggunakan s 41 Akta tersebut untuk menyelesaikan pertikaian antara kumpulan yang bersaing (lihat perenggan 20, 22–23).

(6) Dalam kes ini, KPKS bukan hanya peka akan pertikaian antara dua kumpulan tersebut, tetapi juga peka yang pertikaian tersebut telah dibawa ke hadapan mahkamah menurut surat-surat yang ditulis oleh peguamcara Solomon. KPKS harus peka yang setiap kumpulan tidak mempunyai kuorum yang diperlukan untuk membuat keputusan untuk NUBE. KPKS, yang memang peka dan sedar akan fakta-fakta ini, tidak boleh menggunakan s 41(2) Akta tersebut untuk secara tidak langsung menyelesaikan pertikaian tersebut antara dua kumpulan. Dengan berbuat demikian, KPKS telah bertindak melampaui bidang kuasa beliau dan oleh itu, keputusan beliau terbuka untuk kajian semula kehakiman (lihat perenggan 24, 27).

(7) Sewajarnya, permohonan untuk membatalkan keputusan KPKS dalam menolak Borang-Borang L pertama, kedua dan ketiga pemohon-pemohon telah ditolak kerana KPKS adalah betul untuk menolak Borang-Borang L tersebut. Permohonan untuk membatalkan keputusan KPKS kerana menerima Borang-Borang L responden-responden, yang mempunyai kesan mengisytiharkan pemegang-pemegang jawatan Exco yang sah di sisi undang-undang, adalah dibenarkan (lihat perenggan 28).]

Notes

For cases on rules and regulation of trade unions, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1495–1496.

For cases on trade union disputes, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1529–1534.

Legislation referred to

Trade Unions Act 1959 ss 7, 41

R Sivarasa (Daim & Gamany) for the applicants.

Azizah Haji Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.

Zainur Zakaria (Zainur Zakaria & Co) for the second respondent.

D Kalaimany (Kalai & Partners) for the third to sixth and eighth to 12th respondents.

B Thangaraj (Thangaraj & Assoc) for the seventh respondent.

Raus J:

[1] This is an application by the applicants for an order of certiorari to quash the decision of the Director General of Trade Union (DGTU) in rejecting Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002 and accepting Forms L dated 2 November 2001 and 9 May 2002. These Forms L were submitted pursuant to s 41(2) of the Trade Unions Act 1959 ('the Act'). The decision of the DGTU which the applicants sought to quash is contained in the DGTU's letter dated 29 May 2002. In the said letter, the DGTU rejected the Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002 submitted by the applicants, naming the applicants (Jalil's group) as the lawful office bearers of National Union of Bank Employees (NUBE). In the same letter, the DGTU accepted Forms L dated 2 November 2001 and 9May 2002 submitted by another group (Fauzi's group) and thus, declaring the Fauzi's group as the rightful office bearers of NUBE.

[2] I will first deal with the issue whether or not the DGTU was right in rejecting the Forms L dated 26 April 2002, 30 April, 2002 and 3 May 2002 submitted by Jalil's group, naming them as the lawful office bearers of NUBE. To understand the issue, I think it is important to note the chronological events leading to the submissions of the three Forms L by Jalil's group to the DGTU. The relevant events are as follows:

[3] On 30 October 2001, the National Exco of NUBE removed the fifth applicant (Solomon) as the General Secretary of NUBE and further barred him from holding any office in NUBE.

[4] On 16 November 2001, Solomon not being satisfied with the said decision, filed a suit in the High Court vide Suit No R1–22–07 of 2001 ('the Solomon suit') to challenge the decision of the Exco of NUBE.

[5] The reliefs that were sought in the Solomon's suit were, inter alia as follows:

(a) a declaration that the decision of the Exco of NUBE on 30 October 2001 to remove Solomon as the General Secretary is unlawful, null and void and of no legal effect;

(b) a declaration that the decision of the Exco on 30 October 2001 to prohibit or bar Solomon from holding any position in NUBE is unlawful, null and void and of no effect;

(c) an order that the defendants, by themselves, their servants or agents or otherwise be restrained until further order from acting on the decision of the Exco of the NUBE made on 30 October 2001, that Solomon should be removed as General Secretary of NUBE and that Solomon be prohibited and/or barred from holding any position in the NUBE and/

or in any way implementing or giving effect to the said decision or acting to the detrimental or prejudice to Solomon's membership rights.

[6] On 21 November 2001, Solomon obtained an ex parte injunction order restraining the defendants (in the Solomon's suit) and each of themselves, their servants or agents or otherwise from acting on the decision of the Exco of NUBE made on 30 October 2001. The aforesaid order was continued pursuant to Orders dated 4 December 2001 and 10 January 2002.

[7] On 2 May 2002, on the application of the defendants, the High Court struck out and dismissed with costs, Solomon's suit, on the ground that Solomon's complaint ought to have been referred to arbitration pursuant to r 26 of NUBE's Rule and Constitution read with s 44 of the Act.

[8] On 3 May 2002, Solomon filed an appeal to the Court of Appeal against the said decision.

[9] On 7 May 2002, Solomon filed an application in the Court of Appeal for a stay of the order dated 2 May 2002 made by the High Court pending the final disposal of his appeal to the Court of Appeal. On 8 May 2002, the Court of Appeal granted an interim order to stay the decision of the High Court dated 2 May 2002 and restored the injunction order dated 4 December 2001 retrospectively.

[10] On 16 May 2002, the Court of Appeal decided that the aforesaid Interim Order of 8 May, 2002 and the restoring order should continue until further order from the court. The appeal proper is yet to be heard.

[11] Meanwhile, on 23 April 2002, Jalil's group which includes Solomon, numbering ten held a meeting and pursuant thereto submitted Form L dated 26 April 2002 to the DGTU, naming the office bearers of NUBE.

[12] Again, on 30 April 2002, the same group had another meeting and appointed other officers to fill the vacant positions of the Exco members, whom the applicants had earlier, at the meeting of 23 April 2002 had suspended and expelled. The group then submitted another Forms L dated 30 April 2002 to the DGTU, naming the additional office bearers of NUBE.

[13] On 2 May 2002, Jalil's group held another meeting. This time they decided to revoke the earlier decision of the Exco of 30 October 2001 concerning Solomon and reaffirmed its decision of 30 April 2002 that is; reinstating Solomon as the General Secretary. Arising from that meeting the group then submitted another Form L dated 3 May 2002. The submissions of the three Forms L, by Jalil's group, had the effect, if accepted by the DGTU, making Jalil's group as the rightful office bearers of NUBE.

[14] It was submitted by Encik Zainur Zakaria, who acted for the second respondent, that the first meeting by Jalil's group on 23 April 2002 was illegal and contrary to the constitution of NUBE. I have no reason to disagree. This is because under r 10.5 of the constitution of NUBE, the quorum for the Exco meeting of NUBE shall be two-third. From the facts it is undisputed that the original membership of the Exco of NUBE was 26. But as at 23 April 2002, the Exco had 24 members. Two positions were vacant. Therefore, the

necessary quorum of an Exco meeting at the material time was, therefore, 16. But the meeting held by Jalil's group on 23 April 2002 was attended only by ten original members. Clearly the meeting was in breached the quorum requirement and it must follow that the said meeting was unlawful. As the meeting was unlawful, all decisions taken at the said meeting including submitting the names of the office-bearers of the Exco in the form L must also be null and void. Thus, the DGTU was therefore, right in law to reject Form L dated 23 April 2002.

[15] Form L dated 30 April 2002 was submitted by Jalil's group pursuant to a meeting held on 30 April 2002. I am also of the view that the meeting was also an unlawful meeting for having breached the requirement of r 10.5 of the constitution. Though the list of attendance showed seventeen members were present, seven of those present were new members. They were never members of the original Exco and no explanation or evidence had been produced as to how they become members of the Exco. Consequently, I am of the view that all decisions made by this meeting including the submission of Form L dated 30 April 2002 must also be null and void. Again the DGTU was right in law to reject Form L dated 30 April 2002, submitted by Jalil's group.

[16] Forms L dated 3 May 2002, was submitted pursuant to an Exco meeting held by the Solomon group on 23 April 2002, 25 April 2002 and 30 April 2002. As stated earlier, as the meetings held on 23 April 2002 and 30 April 2002 were null and void, there is no possibility that the meeting on 25 April 2002 can be valid. Again the DGTU was right in law to reject Form L dated 3 May 2002.

[17] Thus, in regard to the first issue, it is my finding that the three forms submitted by the Jalil's group were prepared pursuant to decision made at an unlawful meetings. The DGTU was therefore, absolutely correct in law to reject those forms. To me, the DGTU did not commit any error when he rejected the three Forms. I have no reason to interfere with the DGTU's decision.

[18] I will now deal on the second issue, ie whether the DGTU was correct in law accepting the Forms L dated 2 November 2001 and 9 May 2002. Form L dated 2 November 2001 was submitted to DGTU by the fifth respondent as General Secretary reflecting the changes made following the removal of Solomon as the General Secretary. From the said Form, it can be seen that the fifth respondent, Mohd Noor bin Basir was made General Secretary to replace Solomon. The seventh respondent, Toh Seng Hock the then Vice President was made the Treasurer to replace Mohd Noor, while S Kandaiyah was made the Vice President to replace Toh Seng Hock and Prathiba Raj was made the Deputy General Secretary which was then vacant.

[19] There were two Forms L dated 2 November 2002 submitted to the DGTU. One Form, related to the resignation of Encik Johari Sulaiman, from the post of President of NUBE and the other the appointment of Encik Muhamad Fauzi to the post of President and Encik Abdul Malek Daud as the Deputy President of NUBE.

[20] The issue before me, is whether the DGTU was right in accepting the said Forms. I am of the view that the DGTU was wrong in doing so. No doubt the DGTU in paras 12, 13, and 18 of his affidavit, has averred that he was merely performing his statutory duties under s 41(2) of the Act, but his action has the effect determining the office bearers of NUBE. To me the decision of the DGTU is in excess of his jurisdiction because s 41 of the Act does not empower or authorize the DGTU to determine or to declare the office bearers of the union. Section 41 of the Act reads as follows:

Notification of changes of officers and employees.

(1) A trade union shall exhibit prominently in its registered office in a place where it may be easily read a list showing the names and titles of the officers and employees for the time being of the union, and shall also so exhibit at the office of each branch of the trade union a list showing the names and titles of the officers and employees for the time being of the branch.

(2) Notice in the form prescribed by regulations of every change of officer, employee or of the title of any officer or employee shall, together with the fee prescribed by regulations, be sent to the Director General within fourteen days after the change, and the Director General shall, on being satisfied that such change is not contrary to the rules of the union or this Act or any regulations, alter the register accordingly.

[21] I am of the view that the power of the DGTU to alter the register under s 41 of the Act must be read to its proper construction with the duty to maintain the register as provided under s 7 of the Act in particular s 7(1)(b). Section 7 provides as follows:

7 Register of trade unions

(1) The Director General shall keep and maintain in such form as may be prescribed, a Register of Trade Unions in which shall be registered —

(a) the prescribed particulars relating to any registered trade union;

(b) any alteration or change which may from time to time be effected in such particulars; and

(c) all such other matters as may be required to be registered therein under this Act.

(2) A certified copy of any entry in the register shall be conclusive proof of the facts specified therein as on the date of such certified copy.

[22] The power under s 7 above, cannot be arbitrarily used to settle a dispute between the two competing groups.

[23] To me, the true purport of s 41, is merely to impose on the trade union an obligation to notify the DGTU of any change for the purpose of maintenance of the requirements under s 7. Section 41(2) is to impose the corresponding duty on the DGTU to make the necessary changes after satisfying himself that they were in accordance with the rules of the union. But, surely when the constitution of the office bearers of Union, as in the present case, is hotly contested, the DGTU surely cannot resort to s 41 to settle the dispute between the competing groups.

[24] In this case, the DGTU, was not only aware of the disputes between the two groups, but was also aware that the disputes had been brought to the court. When Solomon was removed as the General Secretary of NUBE on 30 October 2001 and the Exco of NUBE immediately appointed Mohd Noor bin Basir to replace Solomon as General Secretary and make other changes in the line-up of the office bearers as seen in forms L dated 2 November 2001, Solomon's solicitor on 9 November 2001, wrote to DGTU to state that Solomon will be filling an action in court to challenge the Exco's decision dated 30 October 2001. In the said letter, Solomon's solicitor informed the DGTU not to recognize Mohd Noor bin Basir as the General Secretary of NUBE until the lawfulness of the Exco's decision dated 30 October 2001 is finally determined.

[25] Subsequently, when Solomon obtained the ex parte injunction Order as 21 November 2001, his solicitors wrote to the DGTU on 23 November 2001 and notified him of the same. In fact, by letter dated 28 November 2001 the DGTU (through his Deputy) duly acknowledged receipt of Solomon's solicitors' letters dated 9 November 2001 and 23 November 2001 and the Injunction order dated 21 November 2001. In particular, the DGTU agreed that it would be inappropriate/improper for him to recognize Mohd Noor bin Basir as General Secretary of NUBE until the lawfulness of the action taken by the Exco to remove Solomon as Secretary General of NUBE is finally determined. Further by a letter dated 4 December 2001 Solomon solicitor wrote to the DGTU and notified him of the continuation of the injunction order.

[26] On 25 May 2002, the DGTU was informed that the Court of Appeal had, on 16 May 2002 decided to stay the Order of the High Court of 2 May 2002 and restored the earlier Order of the High Court of 4 December 2001 pending the disposal of Solomon's application for stay in the Court of Appeal. In the second letter, the DGTU was also informed therefore, Solomon was to remain as the Secretary General of NUBE and he should not make any decision with regard to the state of the Exco of NUBE as it would be sub-judice in the circumstances and subsequently the seal order of the Court of Appeal was duly served on the DGTU.

[27] Clearly the DGTU was fully aware of the tussle between the two groups to control the NUBE. Both groups were competing with each other to gain control of the Union. The DGTU, must be aware that, each group did not have the necessary quorum to make the decision for the Union. The additional officer bearers in Forms L accepted by him, were being disputed by Jalil's group. Surely the DGTU being fully aware and conscious of these facts cannot use s 41(2) of the Act to indirectly solve the disputes between the two groups. By doing so, I am of the view the DGTU had acted in excess of his jurisdiction and thus; his decision is open to judicial review.

[28] Accordingly, I made the following orders, firstly, the application by the applicants to quash the decision of the DGTU in rejection Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002, submitted by the applicant naming the applicant as the lawful office bearers of the NUBE was refused.

To me, the DGTU was right in rejecting these Forms L. Secondly, the application by the applicant to quash the decision of the DGTU in accepting Forms L dated 2 November 2002 and 9 May 2002, which has the effect of declaring the lawful office bearers of Exco, was therefore, allowed. That part of DGTU's decision was quashed. Thirdly, each party to bear their own costs.

Order accordingly.

Reported by Lim Lee Na